IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1639 OF 2004
IN
EXECUTION APPLICATION NO.205 OF 2004
IN
SUM.SUIT NO.4552 OF 2000

Venus Polymers. ..Plaintiffs.

V/s.

Gosalia Emultech P.Ltd. & Ors. ..Defendants.

Mr.B.S.Shetty for plaintiffsk.

Mr.Kishore Jain with M.A.Shah i/b A.G.Shah for Defendants No.2 to 4/applicants.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 25, 2005.

P.C. :

1. Heard counsel for the parties. Perused the pleadings.

2. This application is for raising attachment in respect of residential premises situated at 3-A, Bhagyodaya, 53, Sarojini Road, Vile Parle (W), Mumbai-400 056 as well as furniture, fixtures, fittings and all other movable articles lying in the said residential premises and for consequential reliefs.

3. It is not in dispute that applicants are

original defendants No.2 to 4 in the summary suit filed by the plaintiffs against the defendant No.1 company. They were so impleaded being directors of the said company. However, during pendency of the summary suit the defendants No. 2 to 4 namely the applicants came to be deleted by order dated 17th December, 2002. Even while decreeing the suit on 8th January, 2003, the order passed by this court has taken note of that position. In that sense, the applicants are third parties.

4. After the decree was passed, plaintiffs caused attachment on the residential flat of the applicants on the assertion that the said property belongs to the defendant No.1 company. Indeed, the registered office address of the defendant No.1 company is shown as 3/A, Bhagyodaya, Sarojini Road, Vile Parle(W), Mumbai, which is the disputed premises. However, the fact remains that the premises in question are residential premises and not commercial premises.

5. Be that as it may, it is seen from the record produced by the applicants that premises in question were purchased by the predecessor of the applicants Shri Chandrakant J. Gosalia by agreement dated 7th

June, 1979. Thereafter, the said Chandrakant Gosalia was admitted as member of the part of the structure owned by the society. The society is co-partnership society. After the demise of the predecessor of the applicants, applicant Smt.Hansa Gosalia has been registered as transferee member in view of nomination, which position is supported by the transfer entry on the share certificate produced before the court. Suffice it to observe, premises is residential flat occupied by the applicants/original defendants No.2 to 4 and owned and possessed by them. It is not the property of the company as such. Except that the registered office is shown at the same address, there is nothing to indicate that company had any other right, title and interest in the disputed property. In fact, there is communication sent as back as on 14th August, 2000, which clearly states that the company is not operating from the address mentioned since long. Thereafter, decree came to be passed. In any case, as the premises are residential premises and owned and possessed by the applicants/original defendants No.2 to 4, chamber summons deserves to be allowed in terms of prayer clause (a),(b) and (c).

6. Counsel for the applicants has fairly

accepted that prayer clause (d) need not to be considered and the same is not pressed.

7. It is made clear that Execution application No.205/2004 is set aside only in so far as Original Defendant Nos. 2 to 4, the applicants herein are concerned.

8. Ordered in the above terms. No order as to costs.